

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022080846

DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 12 and August 28, 2023.

This matter was consolidated for hearing with a similar case involving one of claimant's older brothers, bearing OAH case number 2022080847. Pursuant to Welfare and Institutions Code section 4712.2, subdivision (b), each matter has a separate decision.

The record closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant was represented by her mother, who was assisted by a Spanish language interpreter each hearing day. The names of claimant and her family members are omitted to protect their privacy and maintain confidentiality.

Ron Lopez, IDEA Specialist, represented Westside Regional Center (service agency).

ISSUE

Shall service agency increase funding for claimant's respite from 42 to 60 hours per month?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency exhibits 2 through 15; claimant's exhibit A; as well as the testimony of Ron Lopez, claimant's mother, and Josefina Romo.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

2. Claimant is a four-year-old girl who is a service agency client and eligible for services under the Lanterman Act based on her diagnosis of Unspecified Intellectual Disability. (Exs. 6, 15.)

3. On a date not established, claimant's mother requested an increase of funding for her daughter to receive 60 hours per month of respite. (Exs. 2, 3, 11.)

4. By a Notice of Proposed Action dated April 22, 2022, service agency advised claimant's mother it had denied her request for the increased respite funding. Service agency stated that its Purchase of Service (POS) Committee, in reviewing the request, determined claimant's age, needs, level of care, and natural supports at home, as well as relevant provisions of the Lanterman Act and its service standards, did not support an increase in respite funding. (Ex. 1.)

5. On July 14, 2022, service agency re-sent the Notice of Proposed Action because claimant's mother reported she had not received it. (Ex. 11.)

6. On August 15, 2022, claimant's mother submitted a Fair Hearing Request (FHR), which appealed service agency's service denial. (Ex. 1.)

7. On September 14, 2022, the parties engaged in an Informal Meeting concerning claimant's FHR. No resolution was reached. (Ex. 3.)

8. Official notice is taken from OAH's file of this matter that the hearing initially was scheduled for November 9, 2022, and that the hearing was continued to the following dates for the following reasons: December 9, 2022 (claimant's mother had a doctor's appointment); January 20, 2023 (claimant and her mother were ill); March 6, 2023 (claimant's mother did not receive notice of the new hearing date); March 29 and April 17, 2023 (claimant's mother needed more time to prepare and also

wanted to schedule a mediation); May 5, 2023 (service agency representative failed to appear at the hearing due to a death in his family); and June 12, 2023 (claimant's mother advised she had resolved both matters but later decided she could not sign a notice of resolution).

9. Official notice is taken that in her prior continuance requests, claimant's mother waived the time limit prescribed by the Lanterman Act for holding the hearing and for the ALJ to issue a decision in this case.

Claimant's Relevant Background Information

10. Claimant lives at home with her parents and two older brothers. Her siblings also are service agency clients. (Ex. 6.)

11. Claimant currently is not in school, although claimant's mother has been in contact with her local school district to create an individualized education program. (Exs. 6, 15.)

12. Claimant is unable to speak. She does not make eye contact and runs away when she meets someone new. Claimant has no safety skills and always must be supervised. Claimant will try to run away as soon as she leaves the house and will wander away when the family is out in the community. Claimant can walk on her own but falls a lot. (Ex. 6.)

13. As of February 2023, claimant's mother reported claimant's behaviors had increased. For example, claimant can have tantrums lasting up to five hours, and she is aggressive towards others, such as biting, kicking, and throwing items. (Ex. 15.)

Claimant's Request for Additional Respite Funding

14. Claimant's mother reports the family has no extended circle of support to supervise her children; claimant's mother and father are the only adults available. (Testimony [Test.] of claimant's mother.) Claimant's mother is not employed. While claimant's father works part time, he has a long commute and is gone from home many hours each day. Moreover, because claimant is not in school, she is home much of the week. (Ex. A.)

15. As explained in more detail below, initially claimant was funded to receive 21 hours per month of respite, which was later increased to the current amount of 42 hours per month. Claimant's mother requests the respite funding increase to 60 hours per month for various reasons, one of which is that she needs more of a break from the constant demands of caring for her three developmentally disabled children. For example, even when one child is being supervised by a respite worker, claimant's mother must care for her other two children when they are not in school, such as taking them to medical appointments. (Test. of claimant's mother.)

16. Claimant's mother testified her daughter cries a lot and has tantrums. Claimant does not sleep well through the night, having recently been diagnosed with sleep apnea. These problems necessitate more care by claimant's mother. Claimant's mother has not pursued behavioral services for her daughter of late because those services in the past were provided over Zoom and were ineffective. (Ex. 3.) However, the family has recently requested floor time services, a component of applied behavior analysis, in part, to address claimant's negative behaviors. (Ex. 15.)

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17. Josefina Romo has known the family for the past several years. She confirmed claimant does not socialize and has a difficult time when in the community. Claimant also cries a lot, which can upset her two siblings and trigger them to misbehave. Ms. Romo believes claimant's mother needs more respite time because presently she is using much of claimant's respite time caring for her other two children. (Test. of Romo.)

18. Claimant's mother prepared for the hearing a schedule showing claimant's care needs each hour of the week. (Ex. A.) The chart shows how the family integrates approximately 48 hours per week of In-Home Supportive Services (IHSS), 33 hours per month of personal assistance (PA), and 42 hours of respite funding the family already receives. The family generally uses PA and respite for claimant on weekdays from 2:30 to 4:00 or 4:30 p.m. On weekends the respite is used in the morning and early afternoon.

19. Claimant's mother testified she needs two hours per day away from claimant to achieve a true break from the constant demands and strain of caring for her daughter. Claimant's mother calculated her need for 60 hours per month of respite funding by multiplying two hours per day by 30 days per month.

Service Agency's Determination of Claimant's Respite Needs

20. Service agency uses a Respite Needs Assessment Tool (RNAT) when considering how many hours per month of respite to fund for a family. The RNAT is a survey document in which a service agency employee assesses various factors, with the input of a client's parent or representative, including the client's age, daily living activities, mobility, communication, participation in a school or day program, medical needs, behavioral needs, caregiver situation, and safety/supervision needs. Points are

given for each response. A grid at the end of the document correlates respite hours per month with point totals. The greater the number of points, the greater the respite hours. However, the maximum amount provided on the grid is 42 hours per month; any higher amount must be decided by the planning team. (Exs. 4, 5, 12.)

21. The record indicates claimant first was assessed for respite in December 2021, when she was two years old. The RNAT was completed with input from claimant's mother. Based on the results of the RNAT, service agency determined that 21 hours per month of respite would provide appropriate support for the family. (Exs. 4, 5.) The family thereafter was authorized to receive that amount. (Ex. 7.)

22. On February 15, 2023, after claimant's mother submitted the FHR, claimant's need for respite support was reassessed, again using the RNAT. Claimant then was almost four years old. Claimant's mother provided input in that assessment. The results of her input showed claimant's more advanced age was causing claimant's mother to spend more time and attention to supervising claimant. The results of the RNAT indicated that 42 hours per month of respite were appropriate. (Ex. 12.) Service agency authorized that level of funding almost immediately. (Ex. 14.)

23. The family now receives funding for 42 hours per month of respite for claimant's older brother involved in the consolidated case in addition to the respite for claimant. (Ex. 14, OAH case no. 2022080847.) It is assumed the family receives a similar amount of respite hours for claimant's other brother.

24. Mr. Lopez testified that in light of the other services provided to the family, such as IHSS and PA, the current funding amount of 42 hours per month of respite is appropriate.

25. Service agency has POS guidelines (guidelines) for funding respite. (Ex. 8.) The guidelines define respite consistent with the Lanterman Act (see below). The guidelines require service agency to use the RNAT when assessing a family's respite needs. The guidelines also require service agency to consider generic sources of supervision, such as IHSS. The guidelines provide for funding an amount greater than indicated in the RNAT under the following circumstances:

[W]hen there are extenuating family circumstances that warrant consideration for additional respite such as, but not limited to, parent has left their employment in order to care for the child, additional medical condition of the client that impacts the family, extreme/excessive behavioral challenges, recent event impacting the ability of the primary caregiver to meet the care and supervision needs of the client, client support needs not addressed with current resources (natural supports, generic resources, regional center funded resources), a demonstrated change in the client's level of care and supervision needs not previously discussed in the most recent IPP or Family Respite Needs Assessment. In order to consider an exception for additional respite, [service agency] may request additional information from the family.

(Ex. 8, p. A45.)

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LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716; an undesignated statutory reference is to the Welfare and Institutions Code.) Claimant's mother appealed service agency's denial of her request for an increase of respite funding, and therefore jurisdiction exists for this appeal. (Factual Findings 1-9.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. When one seeks government benefits or services, the burden of proof is on her. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In this case, claimant bears the burden of proving by a preponderance of the evidence that she is entitled to an increase in respite funding.

Applicable Provisions of the Lanterman Act

4. Respite services under the Lanterman Act are designed "to provide intermittent or regularly scheduled temporary relief from the care of a developmentally disabled family member." (§ 4690.2, subd. (a).)

5. Respite services are to be purchased by a regional center based upon the individual needs of a given consumer and her family. Respite services are designed to: assist family members in maintaining a client at home; provide for appropriate care and supervision to ensure the client's safety in the absence of family members; relieve family members from the constantly demanding responsibility of caring for a client; and attend to the client's basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines, which would ordinarily be performed by a family member. (§ 4690.2, subd. (a)(1)-(4).)

6. When purchasing services and supports, regional centers must ensure they conform to their purchase of service policies, as approved by DDS pursuant to section 4434, subdivision (b), as well as utilize generic services and supports when appropriate. (§ 4646.4, subd. (a).)

7. Pursuant to section 4690.2, subdivision (c), in conjunction with section 4629.5, subdivision (b), regional centers are encouraged to develop procedures and assessment tools to be used in determining the level of respite services needed by each consumer, and to publish them on their Internet Websites.

Disposition

8. Claimant's mother makes a sympathetic case for a respite increase. All three of her children are service agency clients. Claimant requires much attention, due to her age and level of development. Claimant's sleep problems and frequent crying exacerbate the situation. Even when claimant's mother receives respite for claimant, she must care for her other two children. On a subjective basis, claimant's mother appears to be a deserving recipient of more help, a conclusion probably that can be made for most families with regional center clients. However, the provisions of the

Lanterman Act cited above show significant increases in respite funding must be demonstrated by objective analysis and consistent with DDS-approved policies.

9. Claimant's family already receives significant assistance in caregiving, such as funding for approximately 48 hours per week of IHSS and 33 hours per month of PA. Claimant and at least one of her siblings receive the maximum amount of monthly respite authorized by the RNAT, and probably the same amount for her other brother. If the request for a respite increase is granted for claimant and her brother, claimant's mother would have between four to six hours per day of respite. That amount gives one pause. It is not clear that simply increasing the amount of respite will remedy the underlying problems. Instead, a better solution may be to more efficiently coordinate the caregiving services currently available, as well as implement medical services for claimant's sleep disorder and behavioral services for her tantrums and crying episodes.

10. Moreover, claimant's current respite funding was determined using an objective analysis contained in service agency's respite assessment tool. DDS encourages regional centers to use such tools in attempting to determine these difficult decisions. The level of funding conforms to service agency's respite guidelines. Put another way, claimant's mother failed to demonstrate her situation warrants an exceptional level of respite funding above the maximum amount she now receives.

11. Based on the above, it cannot be concluded that claimant's evidence of the need for an increase in respite funding is more convincing than the evidence in opposition, and therefore claimant has failed to meet her burden of establishing that she is entitled to the funding increase she requests. Her appeal must be denied. (Factual Findings 1-25; Legal Conclusions 1-10.)

ORDER

Service agency shall not increase funding for claimant's respite from 42 to 60 hours per month.

DATE:

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.